



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing dealt with a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and request for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing, I confirmed that the tenants served their Application and evidence to the landlord by way of two packages sent to the landlord via registered mail. I also confirmed that the landlord had not submitted any documentary evidence in response to the tenant's application.

Issue(s) to be Decided

1. Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?
2. Is it necessary or appropriate to issue orders to the landlord?

Background and Evidence

The parties executed a fixed term tenancy agreement for a tenancy set to commence on October 15, 2016 and expire on May 31, 2017. The tenants are required to pay rent of \$3,050.00 every month. The landlord is holding a security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00.

On November 30, 2016 the landlord posted a 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) on the door of the rental unit and sent another copy to the tenants via registered mail on December 1, 2016. The tenants

submitted that they found the 2 Month Notice on December 1, 2016. The tenants filed to dispute the 2 Month Notice within the time limit for doing so.

The 2 Month Notice has a stated effective date of January 31, 2017 and indicates the reason for ending the tenancy is because “the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant”. In filing this application the tenants point out they have a fixed term tenancy that has an expiry date of May 31, 2017.

The landlord’s agent submitted that the property was purchased by the current owner in November 2016 and a demolition permit was issued in November 2016. The landlord’s agent stated that he is not certain as to the dates of purchase and issuance of the demolition permit. The landlord’s agent testified that he has not been provided a copy of the demolition permit by the owner but was instructed by the owner to serve the tenants with a 2 Month Notice.

Analysis

Ending a tenancy for landlord’s use of property is provided under section 49 of the Act. Section 49(2) provides that the effective date must be:

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

[Reproduced as written with my emphasis underlined]

Where an effective date is incorrect, section 53 of the Act provides that it automatically changes to comply. However, I find it appropriate to cancel the 2 Month Notice in this case and I find the landlord failed to provide evidence to demonstrate that the tenancy should end for the reason indicated on the 2 Month Notice.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

The landlord's agent stated that the property is slated for demolition and a demolition permit has been issued; however, this appears to be based on hearsay evidence as a copy of the demolition permit has not been provided to the landlord's agent or as evidence for this proceeding. Therefore, I find the landlord has not satisfied me that the landlord was in a position to issue the 2 Month Notice on November 30, 2016 and I cancel the 2 Month Notice.

As the parties were informed during the hearing, the landlord remains at liberty to issue another 2 Month Notice if a demolition permit has in fact been issued by the City, provided the effective date of the 2 Month Notice is no earlier than May 31, 2017; however, any Notice to End Tenancy served to the tenants is subject to dispute by the tenants. Alternatively, the parties may agree to enter into a mutual agreement to end tenancy in writing for any other date the parties agree upon.

Since the tenants were successful in this application, I award the tenants recovery of the filing fee and I order the landlord to pay the tenants \$100.00. The tenants are provided a Monetary Order in the amount of \$100.00 to serve and enforce as necessary. The tenants are authorized to deduct \$100.00 from rent otherwise payable to the landlord to satisfy the Monetary Order.

Conclusion

The 2 Month notice dated November 30, 2016 is cancelled.

The tenants are awarded recovery of the filing fee paid for this application and the landlord is ordered to pay the tenants \$100.00. The tenants are provided a Monetary Order in the amount of \$100.00 and the tenants have been authorized to deduct \$100.00 from rent otherwise payable to satisfy the Monetary Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 10, 2017

Residential Tenancy Branch